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(1) Supreme Court, U.S.
FILED

CASE NUMBER: 071357 APR 4 2008

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DWAYNE L. GILLISPIE
Petitioner
vs.
MARINA CLUB OF TAMPA, HOA, INC.
and
MOHAMMED HUSEIN BHADELIA,
and
MOHAMMED FAROOQ BHADELIA,
and
ABDUL RAZAK,

Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals For the Eleventh Circuit Court of Appeals Number: 07-14437

DENIAL OF REHEARING: March 18, 2008
OPINION ISSUED: February 5, 2008

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Plant City, Florida 33565
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QUESTIONS PRESENTED FOR REVIEW

1. Did the United States District Court depart from the accepted and usual course of judicial proceedings, and which deviation has been sanctioned by the 11th Circuit Court of Appeals, to such an extent and so far as to call for an exercise of this Court's supervisory power by failing to properly adhere to those guidelines of Florida Statute 718.110(10) in that request for a Declaratory Judgment?

2. Did the failure of the 11th Circuit Court of Appeals to strike all reference to a non-final opinion, which had been issued by the Florida 2nd District Court of Appeals in regards to Marina Club vs. Razak, and which was issued a month after the District Court Order under appeal, and which was outside of the record on appeal, prejudice the petitioner to such an extent as to result in an opinion being issued which did not address the unenforceability of that mediated settlement, as that improperly attached non-final opinion, if considered by the 11th Circuit would render petitioner's question of unenforceability raised on appeal as moot?

3. Does a vague Florida Statute of Repose supersede those laws of Pakistan when two citizens of Pakistan consummate a mortgage agreement under the laws of Pakistan and when all acts of that financial transaction occurred only in Pakistan and required all monetary transactions to occur outside of the United States?

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 14.1 (b), the following identifies all of the parties appearing here and before the United States Court of Appeals for the Eleventh' Circuit:

The petitioner here and the appellant below is Dwayne L. Gillispie.

The Appellee, and the original defendant and counterclaimant, in the complaints filed in the United States District Court, Middle District of Florida, (and the plaintiff in the complaint filed in the Circuit Court for the state of Florida), below and the respondent here is the Marina Club of Tampa Homeowner's Association, Inc.

The Original Plaintiffs and counter defendants in the Complaints filed in the United States District Court, Middle District of Florida and respondents herein are Mohammed Husein Bhadelia and Mohammed Farooq Bhadelia.

A Defendant in the Counter-claim filed by the respondent Marina Club of Tampa Homeowner's Association, Inc. in the United States District Court, Middle District of Florida who was never served with a summons, (and the defendant in the complaint filed in the Circuit Court for the state of Florida), who is a respondent in this petition is Abdul Razak.

CORPORATE DISCLOSURE STATEMENT

Petitioner does hereby disclose the following pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure with this Court:

(A) The name of each corporation including subsidiaries conglomerates. Affiliates, parent corporations, publicly-traded companies that own 10% or more of a party's stock, and all other identifiable legal entities related to any party in the case:

Abdul Razak
Dwayne L. Gillispie
Kass, Shuler, Solomon, Spector. Foyle & Singer P.A.
Kendra Loar (Fowler White for Abdul Razak)
Marina Club of Tampa Homeowner's Association, Inc. (Buildings A through I)
Marina Club of Tampa Condominium Association, Inc.(Buildings A through I)
Marina Club of Tampa Building K Condominium Association, Inc.
Marina Club of Tampa Building L Condominium Association, Inc.
Marina Club of Tampa Building M Condominium Association, Inc.
Michael Mardis, Esquire (Bhadelia)
Mohammed Farooq Bhadelia
Mohammed Husein Bhadelia
Ronald Henry Trybus, Esquire (Marina Club)
Susan Kay Spurgeon, Esquire (Marina Club)

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDINGS	ii
CORPORATE DISCLOSURE STATEMENT	iii
TABLE OF AUTHORITIES	v
JURISDICTIONAL STATEMENT	vi
INTRODUCTION AND REASONS FOR ISSUANCE OF WRIT OF CERTIORARI	1
ORIGINAL LITIGATION WAS A REQUEST FOR THE DISTRICT COURT TO ISSUE A DECLARATORY JUDGMENT	2
DEVIATION BY THE DISTRICT COURT	5
ENFORCEABILITY OF AGREEMENT	10
MORTGAGE BY LEGAL CHARGE	12
HISTORY OF THE LITIGATION	13
DEVIATION BY COURT OF APPEALS	17
ARGUMENT	20
CONCLUSION	23
APPENDIX (Attached) USA11 No. 07-14437	

TABLE OF AUTHORITIES

Statement of Petitioner

The petitioner in explanation of the table of authorities notes that this petition for a writ of certiorari is directing the Court to an original request for a Declaratory Judgment by the parties to the District Court (U.S.D.C.M.D.F. No.: 8:03-CV-1189) under Florida Statutes 718. et seq and specifically the requirements of F.S. 718.104(3) and 718.110(10) in addition to the mortgage laws of Pakistan.

The reason for the need and request for a declaratory judgment was that there were no previous authorities present which would directly apply to those questions as presented requiring the District Court to establish new authorities.

FEDERAL:	
Federal Rules of Civil Procedure	id
Federal Rules of Appellate Procedure	id
STATE:	
F.S. 718.110(10)	6
F.S. 718.104(2)(3)	7
Mortgage by legal charge	12
Opinions and Orders:	
Issued in USA11 No. 07-14437	App'x.
CITATIONS:	
Bhadelia v. Marina Club, *142 Fed. App'x. 399, 2005 WL 1754001 (11th Cir. 2005), cert denied, 126 S.Ct. 1027 (2006).*	*IX*
FINAL JUDGMENT	
Case No: 8:03-1189	XIV
Settlement Agreement	
Case No.: 8:03-1189	XVII
Restraining Order Under Appeal	XX

JURISDICTIONAL STATEMENT

The decision of the United States Court of Appeals for the 11th Circuit, Case Number: 07-14437 was issued February 5, 2008. A timely petition for rehearing and suggestion for rehearing en banc was denied on March 18, 2008. The Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

The petitioner in petition for certiorari is asking the Court to exercise that supervisory jurisdiction of the Supreme Court of the United States to correct the deviation by the United States District Court for the Middle District of Florida which has departed so far from the accepted and usual course of judicial proceedings, and which deviation has been sanctioned by the 11th Circuit Court of Appeals, to such an extent as to call for an exercise of this Court's supervisory power as permitted under United States Supreme Court Rules 10.

INTRODUCTION AND REASONS FOR ISSUANCE OF WRIT OF CERTIORARI

This petition for a Writ of Certiorari is a request for a review of a Restraining Order which was issued against the petitioner by the District Court for the purpose of enforcing a Final Judgment of the United States District Court, Middle District of Florida.

This is a protracted complex litigation which has been argued in both the courts of the state of Florida and in the United States District Court.

The questions presented for review effect the rights of all citizens of foreign countries purchasing property within the United States utilizing banking services in their native countries. The rulings of the lower courts in this litigation have in effect negated all rights of citizens of foreign countries to rely upon the banking and mortgage laws of their native countries. The impact upon the international banking world in relation to mortgages granted to citizens of foreign countries in purchase of land within the United States requires the exercise of supervisory jurisdiction by this United States Supreme Court.

The petitioner in petition for certiorari is asking the Court to exercise that supervisory jurisdiction of the Supreme Court of the United States to correct the deviation by the United States District Court for the Middle District of Florida which has departed so far from the accepted and usual course of judicial proceedings, and which deviation has been sanctioned by the 11th Circuit Court of Appeals, to such an extent as to call for an exercise of this Court's supervisory power.

THE ORIGINAL LITIGATION WAS A REQUEST FOR THE DISTRICT COURT TO ISSUE A DECLARATORY JUDGMENT

During the litigation the Courts have been sidetracked away from the real questions originally the foundation of this dispute. The real basis for the litigation was a complex request for a Declaratory Judgment to exercise those rights contained within the Florida Condominium laws (F.S. 718.110(10).

This was necessary because the documents required to create the Marina Club of Tampa Condominium Complex under the Florida Condominium laws were never properly recorded.

The original developer (Riverwalk Ltd.) only converted 128 apartments to condominiums but failed financially in 1985.

A totally owned subsidiary (Riverwalk Investments, Inc.) of the bank (City Bank) that had financed that conversion then became the owner of the project but did not obtain the developer's rights to amend the previous documents of the original developer.

Before that second developer could complete construction of the remaining property and record all of the required documents, City Bank failed and was placed into receivership of the Resolution Trust Corporation in 1989.

The Resolution Trust Corporation (a United States Government Agency) was not a developer and served only to preserve the assets of the bank and maintain a status quo of the project. That status quo in relation to the required F.S. 718 et seq, condominium law, documents remain to this day unchanged after almost twenty years.

After a foreclosure action in the United States District Court, the property foreclosed on by the RTC was sold by the RTC at auction on January 7, 1993.

The laws of the United States and the state of Florida do permit a citizen of a foreign country to purchase and own land in the United States.

Mohammed Husein Bhadelia, a citizen of Pakistan was the successful bidder at that, January 7, 1993, RTC auction.

To enable that purchase it was necessary for Mohammed Husein Bhadelia to obtain financing which was not available to him in the United States. To obtain this financing, Bhadelia did enter into a mortgage transaction under the laws of Pakistan with a separate citizen of Pakistan (Abdul Razak). Abdul Razak did then transfer those funds from his bank in Karachi, Pakistan to the bank used by Bhadelia in Karachi Pakistan. Bhadelia did then transfer the funds from that Karachi, Pakistan bank to a bank in Singapore utilized by the financial investment firm owned by Ashruf Bhadelia. Ashruf Bhadelia did then transfer those funds to the escrow account of the attorney John Newcomer, Esq. in Tampa, Florida. Attorney Newcomer did issue the necessary payments on behalf of Mohammed Husein Bhadelia to the United States Government (RTC) for the purchase of that property.

Mohammed Husein Bhadelia, a citizen of Pakistan, did rely upon the United States Government (RTC) to issue the proper and legal deed to include an accurate and absolute legal description in relation to that property purchased by Bhadelia from an agency of the United States Government.

The mortgage which encumbers all property purchased by Bhadelia from the RTC under the laws of Pakistan did permit Bhadelia to borrow additional

funds, if needed, to be used for other business ventures without submitting additional security to Razak for those advances.

Over the years, Bhadelia did exercise that right to additional funds which were used for additional business ventures throughout the Middle East and the U.K. and obtained funds in excess of six million dollars from Razak.

The laws of Pakistan do not contain a statute of repose in regards to that mortgage and permit the parties to a Pakistan mortgage to modify and amend the mortgage with any other (oral or written) agreements without subordinating that original mortgage.

Bhadelia during the 1990's, with written permission of the mortgagee (Razak), did sell those condominium units located at Marina Club which had been constructed by the previous developer. But, Bhadelia remained as the owner of all remaining property identified within that deed issued by the RTC in 1993. That remaining property, which included the shell of Building "N", remained encumbered by that Pakistan mortgage and continued being the security for additional "Financial Advance" transactions between Razak and Bhadelia.

When, in the year 2000, Bhadelia was nearing the completion of that 32 unit building "N", and the recording of condominium documents would be required, it was discovered by the Florida Division of Condominiums that the previously recorded documents which had been recorded by Riverwalk Ltd. had never been properly amended to permit Bhadelia to submit his building to condominium ownership as part of the Marina Club Condominium Project.

At that point, Gillispie, (Petitioner) as an authorized agent of Bhadelia, approached the Executive Board members of the Respondent (Marina Club of Tampa Homeowner's Association, Inc.) and attempted to explain that amendments to all of the previously recorded documents would have to be recorded by Marina Club either through a majority vote of each of the current associations as required under Florida Statute 718.110 or through litigation in the courts under Florida Statute 718.110(10).

The result of that contact with the Executive Condominium Board members was that Marina Club sued Bhadelia in state Circuit Court and Bhadelia sued Marina Club in Federal Court.

DEVIATION BY THE DISTRICT COURT

Bhadelia did in his complaint ask the District Court for a Declaratory Judgment as permitted and required under F.S. 718.110(10) and asked that the District Court Order the Florida Division of Condominiums to oversee any and all agreements to insure that the proper and required documents were amended and filed to complete this multi-condominium complex under the strict compliance with Florida condominium laws.

At that point the litigation began to get confused through the parties filing many non-relevant complaints and questions which distracted the court from the actual request under the guidelines of F.S. 718.110(10) for a Declaratory Judgment.

It was then that the District Court deviated from the accepted and usual course of judicial proceedings when the District Court ordered a

mediation conference before all of the parties to the litigation had been served with summons or notice of the litigation.

- F.S. 718.110(10) If there is an omission or error in a declaration of condominium, or any other document required to establish the condominium, which omission or error would affect the valid existence of the condominium, the circuit court has jurisdiction to entertain a petition of one or more of the unit owners in the condominium, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners, the association, and the mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on unit owners may be by publication, but the plaintiff must furnish every unit owner not personally served with process with a copy of the petition and final decree of the court by certified mail, return receipt requested, at the unit owner's last known residence address. If an action to determine whether the declaration or another condominium document complies with the mandatory requirements for the formation of a condominium is not brought within 3 years of the recording of the declaration, the declaration and other documents shall be effective under this chapter to create a condominium, as of the date the declaration was recorded, whether or not the documents substantially comply with the mandatory requirements of law. However, both before and after the expiration of this 3-year period, the circuit court has jurisdiction to entertain a petition permitted under this subsection for the correction of the documentation.... (emphasis added)

Abdul Razak, the mortgagee of record of this Pakistan Mortgage, was named as a party in the case

below. (District Court Doc.11, Pg.23). The mortgage held by Razak is specifically described in paragraph 70 of Marina Club's counterclaim. (District Court Doc.11, Pg.36). A copy of the Razak mortgage is attached as Exhibit E to the counterclaim filed by respondent Marina Club.

Federal Rules of Civil Procedure would require that Marina Club request the Clerk of Courts to Issue a Summons and serve that summons on Razak. The rules include procedures for serving citizens of a foreign country. The law firm representing Razak in the United States, (Fowler/White), with address, was on that mortgage which Marina Club attached to their counter-claim.

Pakistan mortgage laws require that before any agreement may be entered into by the mortgagor to sell mortgaged property that the mortgagee must issue a certificate of "No Objection" and that certificate must be recorded in each place that the mortgage is recorded.

Florida Statutes 718.104(3) and 718.110(10) require that the mortgagee be properly joined in any litigation relating to that mortgaged property and that the mortgagee must join in any agreements which would subordinate the rights of the mortgagee under that mortgage created in Pakistan under Pakistan laws.

- F.S. 718.104

  Creation of condominiums; contents of declaration.--Every condominium created in this state shall be created pursuant to this chapter.

  (2) A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed. All persons who have record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents,

must join in the execution of the declaration. Upon the recording of the declaration, or an amendment adding a phase to the condominium under s. 718.403(6), all units described in the declaration or phase amendment as being located in or on the land then being submitted to condominium ownership shall come into existence, regardless of the state of completion of planned improvements in which the units may be located.

(3) All persons who have any record interest in any mortgage encumbering the interest in the land being submitted to condominium ownership must either join in the execution of the declaration or execute, with the requirements for deed, and record, a consent to the declaration or an agreement subordinating their mortgage interest to the declaration.

(Emphasis added)

The mediation conference was held without Abdul Razak being notified, being present, or represented and denied Abdul Razak of those rights possessed by that Pakistan mortgage to participate in any mediation agreement.

Those parties present at the mediation conference entered into an agreement in violation of F.S. 718.104(2)(3) whereby Bhadelia would sell Marina Club property which was encumbered by a Pakistan mortgage without obtaining any authorization from Abdul Razak, the mortgagee.

Marina Club then proceeded to sue Abdul Razak in the Circuit Court of Florida and under an obscure Florida statute of repose did obtain a summary judgment against Razak quieting the title against Razak and that Pakistan mortgage.

In that Summary Judgment issued by the Florida Court it appears that Florida is stating that an obscure and vague Florida statute of repose

supersedes the banking laws of Pakistan. The mortgage was entered into in the country of Pakistan between two citizens of Pakistan.

The parties to the mortgage are subject to the laws of Pakistan. Marina Club is not a party to the mortgage agreement.

Marina Club based all standing in the Circuit Court of Florida on an Order of Quiet Title prematurely issued by the United States District Court to enforce that mediation agreement.

That agreement required that the parties complete three important steps (See: App'x XVIII) in the transfer of title to the property. The first step required Marina Club to first pay to Bhadelia $675,000., second step would require Bhadelia to remove all liens prior to issuance of a deed, and then and only upon that payment and issuance of a deed would Bhadelia agree to the issuance of a Quiet Title to Marina Club.

Marina Club has never paid that $675,000. and Bhadelia did not have an opportunity to remove those liens prior to Marina Club requesting the District Court to enforce the agreement.

The District Court improperly bypassed the requirements for payment of the $675,000. and the issuance of a deed and sua sponte issued a Quiet Title to Marina Club without requiring Marina Club to ever pay that $675,000. either to Bhadelia or into an escrow account supervised by the District Court.

Marina Club then used that premature District Court order of Quiet Title to sue in state court against Razak for quiet title stating that the District Court had removed all claims possessed by Bhadelia in that deed issued by the United States Government to the property by the issuance of that

premature order of Quiet Title. *(See: D.C. Order at App'x XIV and XV p. 5)*

QUESTION OF ENFORCEABILITY OF AGREEMENT

The petitioner did address in his appeal the question of the enforceability of that Final Judgment which was entered to enforce a "Court Ordered Mediated Settlement Agreement" when the parties are unable to legally, "under Florida Statutes", comply with the full terms of the agreement.

The parties to the original complaint and the counter-complaint filed in the United States District Court did request the District Court to issue a Declaratory Judgment in relation to the Florida Condominium Laws which directly control the legal creation of condominiums and specifically that Marina Club of Tampa Condominium Complex. The District Court would have jurisdiction under diversity of citizenship and concurrent jurisdiction under Florida Statutes 718.104(3) and 718.110(10) to issue that Declaratory Judgment and correct those condominium documents.

Florida Statute 718.110(10) and 718.104(3) specifically require the joinder of all mortgagees of record as a party to a request for a Declaratory Judgment which is requested to comply with Florida Statute 718.110 to amend or correct documents previously recorded to create a multi-condominium complex.

Abdul Razak, a citizen of Pakistan, (Mortgagee) was named in the counter-complaint as a party in the litigation. But, at no time was a summons ever issued or served upon Abdul Razak as

would be required under Federal Rules of Civil Procedure and the laws of Pakistan.

Florida Statute 718.110(10) would directly control the request by the parties for a Declaratory Judgment requiring the United States District Court to strictly comply with the instructions of the Florida Legislation in that litigation requesting a Declaratory Judgment.

The District Court did not adhere to those required procedures specified and required within Florida Statute 718.110(10). Instead the District Court did sua sponte issue an order for the parties, but only those who had been served with summons, to attend a Court Ordered Mediation Conference.

Respondent, Abdul Razak, was the mortgagee of a valid mortgage entered into between two citizens of Pakistan under the laws of Pakistan and was never served any notification or summons as required under Federal Rules of Civil Procedure, Florida Statutes 718.104(3), 718.110(10), and the laws of Pakistan, in addition to those International Laws on Banking.

Federal Rules of Mediation require that all necessary parties to any mediation agreement must be present during that mediation conference. Respondent, Abdul Razak, was denied the opportunity to defend that mortgage and rights of a mortgagee at that mediation conference.

As a result of this deviation from the required Florida Statute 718.110(10) procedures by the District Court an agreement was entered into by the Respondents; Bhadelia and Marina Club of Tampa Homeowner's Association, Inc., whereby Bhadelia would sell to Marina Club that property which is subject to that mortgage which had been entered into in Pakistan under Pakistan laws.

Pakistan laws do not contain any statute of repose on a mortgage and require that before any agreement may be entered into for sale of mortgaged property that the mortgagee must issue and record a certificate of "No Objection" to the sale.

This is especially important as the "Mortgage" was consummated in the country of Pakistan under Pakistan laws by two citizens of Pakistan with all transactions of the mortgage occurring in Pakistan. Property subject to a mortgage in Pakistan may be situated anywhere with that property remaining subject to Pakistan mortgage and foreclosure laws.

The terms of the agreement may not be legally completed without the joinder under Florida Statute 718.104(3) of the mortgagee (Razak) and for that reason the agreement would be unenforceable under Florida Statutes, Pakistan Laws, and the International Laws of Banking.

MORTGAGE BY LEGAL CHARGE

In a mortgage by legal charge, the debtor remains the legal owner of the property, but the creditor gains sufficient rights over it to enable them to enforce their security, such as a right to take possession of the property or sell it.

To protect the lender, a mortgage by legal charge is usually recorded in a public register. Since mortgage debt is often the largest debt owed by the debtor, banks and other mortgage lenders run title searches of the real property to make certain that there are no mortgages already registered on the debtor's property which might have higher priority.

This type of mortgage is common in the United States and, since 1925; it has been the usual form of mortgage throughout the United Kingdom and in

England and Wales. In Scotland, the mortgage by legal charge is also known as standard security.

In Pakistan, the mortgage by legal charge is the most common way used to secure the financing. It is also known as Registered Mortgage. After registration of legal charge, the Mortgagee's Lien is recorded in the Pakistan Government land register stating that the property is under mortgage and can not be sold without obtaining NOC (No Objection Certificate) from the Mortgagee.

STATEMENT AND HISTORY OF THE LITIGATION

The 11th Circuit in that opinion issued seems to believe that this is a condominium complex consisting of two buildings with a simple disagreement.

The Marina Club of Tampa Complex is not just one complex consisting of one condominium association, but instead consists of a group of twelve buildings and four current condominium associations and one future association joined together by the sharing of common areas and amenities.

The Marina Club of Tampa Homeowner's Association, Inc. (Respondent) was created through the recording of Covenants, Restrictions, and Easements (CRE's) by the first developer (Riverwalk Ltd.) to manage the common areas.

But, those CRE's were never amended by the Original Declarant to ever include any common area outside of buildings "A" through "I". Subsequently, the unit owners within those condominium associations consisting of buildings "K", "L", and "M" were never legally under F.S. 718. et seq established as members of that Homeowner's Association. But,

F.S. 718.110(10) did permit a unit owner to petition the Florida Circuit Courts to correct that error or omission in the recorded documents. The opinion of the Court of Appeals issued February 5, 2008 does deprive all current owners and future owners of that statutory right to petition the Florida Circuit Courts or any court for redress or correction of those condominium documents.

Unfortunately for the current property owners, the original developer failed financially and the complex was never properly completed under the strict requirements of Florida Statutes 718. et seq. which specify and regulate the required documents necessary for the legal creation of condominiums.

The first developer, Riverwalk Ltd., converted 128 apartments in buildings "A" through "I" to condominiums and did record the condominium documents relating to those 128 condominium units. But, in 1985 Riverwalk Ltd failed prior to constructing any other buildings or structures and deeded the undeveloped portions of the complex to Riverwalk Investments, Inc. a second developer.

Riverwalk Investments, Inc. proceeded to construct four additional buildings which were buildings "K", "L", "M", and "N". Prior to being foreclosed on by the RTC, Riverwalk Investments, Inc. was able to complete the construction of buildings "K", "L", and "M" and did record Separate Declarations of Condominium documents for each of those three buildings adding three new condominium associations to the project. But, those documents did not amend the CRE's and did not properly subject those associations to the CRE's as would be required under Florida Statutes 718.104 and 718.110.

Florida Statutes 718.104 and 718.110 would require that prior to the condominiums in buildings

"K", "L", and "M" being subject to the Covenants, Restrictions and Easements (CRE) recorded by the first developer in relation to buildings "A" through "I" that an amended Declaration of Condominium and CRE be recorded by the parties possessing the legal authority to amend.

There is a legitimate and legal method under Florida Statutes 718.110(10) to correct this failure of the developers to previously subject all of the Marina Club Complex property to the CRE's recorded in relation to buildings "A" through "I".

The parties in that request for a Declaratory Judgment were asking the District Court to perform those tasks required of a Circuit Court for the state of Florida by Florida Statutes 718.110(10). A Court ordered mediation conference is not a procedure permitted or addressed under 718.110(10).

The Court of Appeals has issued an opinion, which to the extent that it addresses the jurisdictional question, is not challenged or argued by the petitioner. But, what this opinion has failed to address is the questions relating to the Mediated Settlement Agreement properly raised in those questions presented by the petitioner in that appeal.

The Respondent (Marina Club) in the state litigation requested a Declaratory Judgment in relation to those CRE's. The plaintiffs in this original litigation (Bhadelia) requested a Declaratory Judgment in regards to the laws and rights under those same CRE's.

A Declaratory Judgment is a determination of law and is not a proper subject for mediation. This is further evident in that the mediation agreement, as entered, has successfully waived the rights of future property owners within the Marina Club of Tampa Complex to exercise those rights possessed in F.S.

718.110(10) to have the Florida Circuit Court exercise jurisdiction to correct those deficient documents previously recorded.

Since the parties did raise those questions in this litigation in the requests for Declaratory Judgments and since the Court of Appeals has stated in the current Opinion and the law of the case doctrine that the Mediation Agreement has resolved all of the litigation then the Circuit Courts of Florida would be barred by *res judicata* from jurisdiction to correct the Declarations of Condominium and the CRE's.

Because of the previous events, which were not controlled by any of the parties to this litigation, several of the F.S. 718. et. seq. actions normally performed by a developer were never performed and can now only be performed under F.S. 718.110(10) through proper litigation in Florida Circuit Courts. This is because no single entity possesses that authority, or rights, of the original Declarant to amend each of the necessary documents. That is the result of having five different associations sharing the same complex and common areas. The mediated settlement agreement would waive the rights of all present property owners and future property owners to ever petition the Florida Circuit Court to correct those deficiencies of the currently recorded documents.

The Court of Appeals has through the law of the case and the previous appeals established in the immediate opinion that the District Court does have proper jurisdiction. But, the terms of the mediated settlement agreement would require that the Court address the actual construction of the mediated settlement agreement and the inability under

Florida Statute 718.et seq for the parties to comply with the full terms of the agreement.

Since the parties did request a Declaratory Judgment and since the Court of Appeals has ruled that the District Court has jurisdiction of the issues then it would appear that the District Court would have concurrent jurisdiction over Florida Statutes 718.110(10) as an action to enter that Declaratory Judgment and Order the Florida Division of Condominiums to oversee all agreements and filing of documents properly.

DEVIATION BY COURT OF APPEALS

The petitioner is requesting that the Court address the Mediated Settlement Agreement and the questions presented by the petitioner relating to the agreement. This mediation settlement agreement was never properly addressed by the 11th Circuit Court of Appeals because of the deviation of the 11th Circuit from the usual course of proceedings.

The petitioner has been prejudiced in the appeal when the 11th Circuit Court of Appeals permitted Marina Club to attach an opinion of the 2nd District Court of Appeals for the state of Florida when that opinion had been issued more than a month after the District Court Order under Appeal. This prejudice is evident in that the Court of Appeals did not strike that attachment and reference to materials outside of the record on appeal and through the opinion issued by the 11th Circuit it is evident that the Court of Appeals did rely upon that improperly attached opinion in the rulings of the 11th Circuit.

In that brief filed by Marina Club in the 11th Circuit were numerous references to a non-final

opinion issued by the 2nd District Court of Appeals for the state of Florida which was issued more than a month after the District Court Order under appeal by the petitioner. Marina Club even attached that opinion which was outside of the record on appeal. In the petitioner's reply brief, the petitioner immediately objected to the inclusion by Marina Club of that opinion.

The 11th Circuit did not strike those references or the attached opinion and did not make any statement that the opinion of the 11th Circuit as issued was not influenced by the inclusion of that opinion. Petitioner was prejudiced in his appeal at that point as that non-final opinion directly superseded the mortgage laws of Pakistan with a vague and obscure Florida statute of repose. Under that opinion as presented to the 11th Circuit Court of Appeals it would appear that the petitioner's question regarding the requirement of joinder of mortgagee in the mediation was a moot question. Again, the 11th Circuit issued no statement that the Court did not rely on that non-final opinion in the legal processes of petitioner's appeal.

That non-final opinion did supersede the mortgage laws of Pakistan with a statute of repose from the state of Florida. It also assumed that the mediation agreement had been fully complied with and that the only question was to Quiet Title against the mortgagee.

In the opinion the Appeals Court did superficially address the construction of that agreement. The opinion did not address the question as raised in regards to the agreement being unenforceable except to again rule that the District Court has jurisdiction to enforce a settlement agreement. The real question in that construction of

the agreement is: "Does Florida Statutes 718 et seq render that agreement unenforceable as written"?

"Does that mortgage entered into under the laws of Pakistan between two citizens of Pakistan prohibit compliance with the terms of the agreement without the joinder of the mortgagee"?

The Florida legislature recognized the inherent problems resulting from creations of condominiums and the difficulty which would arise when developers failed to file proper documents or when those documents contained errors or omissions. That is why F.S. 718.110(10) permits an owner to petition the Florida Circuit Court for relief and resolution. What the legislation did not anticipate is that in a separate litigation that it would be possible for an association to enter into a settlement agreement which would successfully terminate the rights of individual present and future unit owners to exercise those rights granted under F.S. 718.110(10).

It is now necessary for this Court to properly address the agreement and the relation of the legal requirements of F.S. 718.104 and .718.110(10) recognizing that the previous developers did not properly record the documents creating these four present condominium associations and that those failures and omissions have legally barred Bhadelia from the ability to comply with the terms of that mediation agreement as written.

It is additionally necessary to address that mortgage entered into in the country of Pakistan between two citizens of Pakistan under Pakistan laws and the possible effect of this litigation on the rights of citizens of foreign countries purchasing property within the United States

ARGUMENT

The question of importance which was not properly addressed by the Court of Appeals was the enforceability of the mediated settlement agreement. That enforcement of the agreement question is not based upon "if the District Court had jurisdiction" but instead is based upon whether a "District Court can enforce this particular agreement as written".

Bhadelia and Marina Club entered into a settlement agreement, which, if the District Court had proper original jurisdiction, would be within the jurisdiction of the District Court to enforce.

But, petitioner stresses at this time that agreements and contracts may at times be a perfectly valid agreement but remain unenforceable due to the inability of the parties to perform the terms of the agreement.

The petitioner did raise the issue in his appeal that the agreement required Bhadelia to unilaterally submit his property to the CRE's as recorded by Riverwalk Ltd. and that Florida Statutes and the laws of Pakistan prohibit that act.

Because, as stated within the Opinion issued by the Court of Appeals, the mediated settlement agreement has resolved the previous litigation and request for a Declaratory Judgment then Bhadelia is prevented by *res judicata* from now requesting the Florida Circuit Court under F.S. 718.110(10) for corrections and amendments to those previously recorded condominium documents and to subject his property to those CRE's.

Pakistan mortgage laws do not contain a statute of repose and do not recognize a statute of repose from the state of Florida.

Under Pakistan laws, if Bhadelia complied with the agreement and sold Marina Club that property without permission of Razak then Bhadelia could be prosecuted in Pakistan for criminal acts.

Federal Rules of Civil Procedure, Rule 60b, does permit an avenue for Bhadelia to return to the District Court for relief from a Final Judgment, but, again *res judicata* and law of the case doctrine would require that the District Court rule that the settlement agreement resolved the case and would prevent the District Court from entering orders to comply with F.S. 718.110(10) under the Opinion as issued in this appeal.

The terms of that settlement agreement have created a contract between the parties which has an intent which is not the dispute. The parties all want to record the proper documents which would submit Building N to condominium ownership. The intent of that agreement and the agreement itself has only served to clarify the purpose of the original request for a Declaratory Judgment. In essence, the parties are in the same position they were in when the original request for a Declaratory Judgment was filed except that through the deviation by the District Court the parties are now prohibited by the law of the case doctrine and *res judicata* from obtaining that relief permitted under F.S. 718.110(10).

The parties to this litigation are not to blame for the failure of the developers and owners in the past to properly record condominium documents which would permit Bhadelia to comply with the terms of the agreement.

The parties are not to blame for complying with the improper order of the District Court to attend a mediation conference.

But, the parties to this litigation are to blame for failure to enter into a settlement agreement which would comply with Florida Condominium Statutes 718. et. seq.

The parties are to blame for entering into a settlement agreement which can never be completed legally by the parties without exercise of those rights contained within F.S. 718.110(10) and a Declaratory Judgment Order being issued by the District Court.

Failure of the Opinion of the Court of Appeals to address that agreement in relation to those rights of future owners under Florida Condominium Laws has resulted in an inability of all current and future owners to ever exercise those rights to correct those previously recorded documents and to permit that Marina Club of Tampa Condominium Complex to comply with Florida Statutes.

A failure of the parties to properly and legally comply with F.S. 718 et seq in the recording of those documents will present a permanent legal cloud upon the deeds of each of those 230 condominiums. The settlement agreement as written can never be legally complied with by Bhadelia as Bhadelia can not legally subject his property to those CRE's without complying with F.S. 718 et seq, in addition to those mortgage laws of Pakistan, and the opinion as issued on February 5, 2008 would forever deny Bhadelia of that avenue provided by the Florida legislature in F.S. 718.110(10) as a vehicle to comply with that agreement.

But, the petitioner does argue that because of the denial of a legal avenue for Bhadelia to comply fully with the terms of the settlement agreement that the settlement agreement would be unenforceable.

If, as the petitioner argues, the agreement is unenforceable then the argument is that the agreement did not resolve that previous litigation.

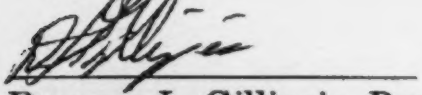
In addition, since the agreement was entered for the purpose of resolving a request for a Declaratory Judgment, and a Declaratory Judgment with a question of laws and rights is not a proper subject for mediation, then an Order of Remand to the District Court for the purpose of entering any necessary Declaratory Judgment Orders by the District Court under F.S. 718.110(10) which would enable the compliance with the purpose and intent of the original request for a Declaratory Judgment would be a proper remedy at this time.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

The Court may also wish to consider summary reversal under that supervisory jurisdiction with remand to United States District Court, Middle District of Florida for proper consideration of original request for Declaratory Judgment under F.S. 718.110(10).

Respectfully submitted,
This 19th day of April, 2008



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IN THE
SUPREME COURT OF THE
UNITED STATES

DWAYNE L. GILLISPIE
Petitioner
vs.
MARINA CLUB OF TAMPA, HOA, INC.
and
MOHAMMED HUSEIN BHADELIA,
and
MOHAMMED FAROOQ BHADELIA,
and
ABDUL RAZAK,

Respondents

APPENDIX OF PETITIONER

APPENDIX INDEX

DENIAL OF REHEARING	II
MANDATE ISSUED	IV
OPINION ISSUED	V
Bhadelia v. Marina Club, *142 Fed. Appx. 399, 2005 WL 1754001 (11th Cir. 2005),*	*IX*
FINAL JUDGMENT Case No: 8:03-1189	XIV
Settlement Agreement Case No.: 8:03-1189	XVII
RESTRAINING ORDER UNDER APPEAL	XX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-14437-CC

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT
MARCH 18, 2008
THOMAS K KAHN CLERK

MOHAMMED HUSEIN BHADELIA,
an individual and citizen of Karachi, Pakistan,
MOHAMMED FAROOQ BHADELIA,
an individual and citizen of the U.S.A.,
Plaintiffs-Counter/Defendants,
versus
MARINA CLUB OF TAMPA, HOMEOWNERS ASSOCIATION, INC.,
a Florida (F.S. Chapter 720) corporation,

Defendant-Counter/Claimant-Appellee,

DWAYNE L. GILLISPIE,
Movant-Appellant.

On Appeal from the United States
District Court for the Middle District of Florida

ON PETITION(S} FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

Before: CARNES, HULL and PRYOR, Circuit Judges

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

THOMAS K. KAHN
CLERK

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 07-14437

FILED:
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
Feb 5, 2008
THOMAS K. KAHN CLERK

District Court Docket No. 03-01189-CV-T-26TGW

MOHAMMED HUSEIN BHADELIA,
an individual and citizen of Karachi, Pakistan,
MOHAMMED FAROOQ BHADELIA,
an individual and citizen of the U.S.A.,
Plaintiffs-Counter/Defendants,
versus
MARINA CLUB OF TAMPA, HOMEOWNERS ASSOCIATION, INC., a Florida (F.S. Chapter 720) corporation,
Defendant-Counter/Claimant-Appellee,

DWAYNE L. GILLISPIE,
Movant/Appellant.

==========

Appeal from the United States District Court for the Middle District of Florida

==========

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: February 5, 2008
For the Court: Thomas K. Kahn, Clerk
By: Gilman, Nancy

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
FEBRUARY. 5, 2008
THOMAS K. KAHN
CLERK

No. 07-14437
Non-Argument Calendar
D. C. Docket No. 03-01189-CV-T-26TGW

MOHAMMED HUSEIN BHADELIA,
an individual and citizen of Karachi, Pakistan,
MOHAMMED FAROOQ BHADELIA,
an individual and citizen of the U.S.A.,
Plaintiffs-Counter Defendants,

versus

MARINA CLUB OF TAMPA, HOMEOWNERS ASSOCIATION, INC.,
a Florida (F.S. Chapter 720) corporation,
Defendant-Counter Claimant-Appellee,

DWAYNE L. GILLISPIE,
Movant-Appellant.

Appeal from the United States District Court for the
Middle District of Flor da
(February 5, 2008)

Before CARNES, HULL and PRYOR, Circuit Judges.

PER CURIAM:

Dwayne Gillispie, a pro se respondent who was enjoined by the district court, appeals the district court's order granting a permanent injunction. After review, we affirm.

This appeal arises out of a protracted dispute between plaintiff Husein Bhadelia, the owner of an unfinished condominium building, Building N, and defendant Marina Club of Tampa, the homeowners association for the unit owners in the two completed condominium buildings. After court-ordered mediation, the parties entered into a settlement agreement. Plaintiff Bhadelia then challenged the settlement agreement on appeal, and a prior panel affirmed. See: Bhadelia v. Marina Club of Tampa, 142 Fed. App'x 399 (11th Cir. 2005).

After more proceedings, including the award of contempt sanctions against plaintiff Bhadelia, the Marina Club filed a motion for a temporary restraining order and preliminary injunction, seeking to enjoin plaintiff Bhadelia and his agents, Sunni Bhadelia and appellant Gillispie, from violating the terms of the settlement agreement. After Gillispie filed a response and the district court held a hearing, the district court granted Marina Club's motion for a preliminary injunction.

Because this Court, in a previous appeal, already rejected challenges to the district court's jurisdiction in this case, we are precluded under the law-of-the-case doctrine from reviewing Gillispie's current challenge to the district court's jurisdiction. Alphamed, Inc. v. B. Braun Med., Inc., 367 F.3d 1280, 1285-86 (11th Cir. 2004). Furthermore, Gillispie is bound by the district court's injunction because the undisputed record shows that Gillispie was acting as plaintiff Bhadelia's agent, was in "active concert and participation with" plaintiff Bhadelia and had actual notice of the district court's order. See Fed. R. Civ. P. 65(d).

Finally, because the terms of the settlement agreement demonstrate the intent of the parties to have the units in Building N be used only as condominium units, the District Court did not err in its construction of the settlement agreement.

AFFIRMED.

1. We review de novo a district court' s application of the law-of-the-case doctrine. Transamerica Leasing, Inc. v. Inst. of London Underwriters, 430 F.3d 1326, 1331 (11th Cir. 2005). We likewise review de novo a district court's construction of a settlement agreement. Waters v. Int'l Precious Metals Com, 237 F.3d 1273, 1277 (11th Cir. 2001).

2.We reject Gillispie's claim that the Court did not reach the merits of the district court's jurisdiction in the prior appeal. Plaintiff Bhadelia filed a motion to dismiss Marina Club's counterclaim and argued, inter alia, that the district court lacked subject matter jurisdiction. Bhadelia's brief on appeal

raised the same jurisdictional challenge to this Court. In a footnote in our prior panel opinion, this Court stated, "The Bhadelia's' remaining issues on appeal, such as the district court's initial denial of their motion to dismiss the Marina Club's counterclaim before sending the case to settlement, are without merit and not discussed further." Bhadelia, 142 Fed. App'x at 402 n.2. Thus, this Court has already rejected the challenge to the district court's jurisdiction over Marina Club's counterclaim.

Even assuming arguendo that Gillispie was correct and there was no subject matter jurisdiction over the counterclaim, Gillispie does not dispute that the district court had subject matter jurisdiction over Bhadelia's complaint against Marina Club and that the parties entered into a settlement agreement resolving the entire case. The district court had jurisdiction to enforce the settlement agreement.

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT FILED

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JULY 27, 2005
No. 05-11292

THOMAS K. KAHN
CLERK

Non-Argument Calendar

D.C. Docket No. 03-01189-CV-T-26-TGW

MOHAMMED HUSEIN BHADELIA,
an individual and citizen of Karachi Pakistan,
MOHAMMED FAROOQ BHADELIA,
an individual and citizen of the U.S.A,
Plaintiffs-Counter-
Defendants-Appellants,

versus

MARINA CLUB OF TAMPA,
HOMEOWNERS ASSOCIATION, INC.,
A Florida (F.S. Chapter 720) corporation,
Defendant-Counter-
Claimant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(July 27, 2005)

Before TJOFLAT, DUBINA and HULL, Circuit Judges.

PER CURIAM:

Plaintiffs Mohammed Husein Bhadelia and Mohammed Farooq Bhadelia, who are brothers, appeal the district court's enforcement of a settlement agreement between them and defendant Marina Club of Tampa, Homeowners Association, Inc. ("Marina Club"). After review, we affirm.

I. BACKGROUND

A. The Dispute

Husein Bhadelia is a citizen and resident of Pakistan. His brother, Farooq Bhadelia is a citizen of the United States of America.

In 1993, Husein Bhadelia purchased three condominium buildings in Tampa, Florida. Two of the condominium buildings were complete, but the third was merely an open shell and construction site. After Husein Bhadelia purchased the buildings, his brother, Farooq Bhadelia, acted as Husein Bhadelia's agent and sold most of the remaining units in the two completed buildings. However, the Bhadelias allowed the third building to remain an open shell and construction site.

The condominium unit owners in the two other buildings were upset with the appearance of the unfinished building and the effect it was having on property values. For the next ten years, the Bhadelia's and the Marina Club, which served as the homeowners association for the condominium unit owners, periodically engaged in disputes over the unfinished building.

On August 1, 2003, the Bhadelias filed an amended complaint against Marina Club alleging that the Marina Club: (1) retaliated against them in violation of the Americans with Disabilities Act and the Federal Fair Housing Act; (2) discriminated against

them after the September 11, 2001 attacks; (3) improperly placed liens on the Bhadelias' property; and (4) fraudulently represented that it had authority to manage the common areas of the condominium complex. (1)

The Marina Club filed a counterclaim seeking: (1) title to all common areas and amenities; (2) title to the unfinished building and all other non-developed land; and (3) an injunction preventing the Bhadelias from maintaining a nuisance.

B. The Settlement

On July 7, 2004, the district court referred the parties to court-ordered mediation. Husein Bhadelia did not attend the settlement conference, but his brother, Farooq Bhadelia, and the Bhadelias' attorney did. The Bhadelias' attorney at the mediation was the same attorney who filed the amended complaint.

After more than eleven hours of mediation, Farooq Bhadelia and Marina Club reached a settlement. The settlement agreement is signed by Farooq Bhadelia on behalf of Husein Bhadelia. According to the terms of the settlement, Husein Bhadelia would retain title to the unfinished building, but was subject to certain deadlines for the completion of the unfinished building, and Marina Club would pay $675,000 for title to the amenities, common areas, and two additional parcels of land.

After the parties reached the above settlement, Husein Bhadelia rejected the settlement and claimed that his brother, Farooq Bhadelia, acted outside the scope of his authority in entering into the settlement. Unable to get the Bhadelia's to comply with the terms of the settlement, the Marina Club filed a motion to enforce the settlement agreement in federal district court.

C. Hearing Before the District Court The district court conducted an evidentiary hearing into whether Farooq Bhadelia had the authority to enter into the settlement agreement on behalf of Husein Bhadelia. As with the settlement conference, Husein Bhadelia did not attend the evidentiary hearing.

At the evidentiary hearing, the mediator testified that he "was told that everybody was represented [at the settlement conference] that could bind the parties to an agreement." Furthermore, Farooq Bhadelia testified that he acted as his brother's agent in selling units in the two completed condominium buildings. Farooq Bhadelia also stated that he acted with his brother's authority when filing the lawsuit against the Marina Club and when beginning the settlement negotiations. Finally, the Bhadelia's' attorney testified that "in the past 15 years of representing Mr. [Farooq] Bhadelia, I had never known him to need specific authority from his brother [Husein Bhadelia] to do anything he was doing on behalf of his brother."

At the conclusion of the evidentiary hearing, the district court determined that Farooq Bhadelia acted within the scope of his authority as Husein Bhadelia's agent. Consequently, the district court granted the Marina Club's motion to enforce the settlement agreement.

The Bhadelia's appeal.

II. DISCUSSION

We review a district court's decision to enforce a settlement agreement for an abuse of discretion. Hayes v. Nat'l Serv. Indus., 196 F.3d 1252, 1254 (11th Cir. 1999). Furthermore, we look to state law when determining whether an agent had authority to enter into a settlement agreement. Id.

In Florida, a principal is liable for the acts of its agent under both express and apparent authority. Stiles v. Gordon Land Co., 44 So.2d 417, 421 (Fla. 1950). "By apparent authority is meant, such authority as the principal wrongfully permits the agent to assume or which the principal by his actions or words holds the agent out as possessing." Id.
In this case, there is no dispute that Husein Bhadelia authorized Farooq Bhadelia to bring the initial suit against the Marina Club. Furthermore, Farooq Bhadelia acted as Husein Bhadelia's agent in selling condominium units from the finished buildings. Finally, both Farooq Bhadelia and the Bhadelias' attorney testified that Farooq Bhadelia had the authority to enter into settlement negotiations. Given these circumstances, the district court did not err in concluding that Farooq Bhadelia had the authority to settle the lawsuit on Husein Bhadelia's behalf, and, thus, the district court did not abuse its discretion when enforcing the settlement.2

AFFIRMED.

1. The Bhadelias filed an initial two-count complaint on June 6, 2003. We address the amended complaint because it contains the claims that went to mediation.
2. The Bhadelias' remaining issues on appeal, such as the district court's initial denial of their motion to dismiss the Marina Club's counterclaim before sending the case to settlement, are without merit and not discussed further. The settlement agreement resolved the entire case.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT of FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA, et al,
Plaintiffs.
v. CASE No: 8:03-1189

MARINA CLUB OF TAMPA HOMEOWNERS ASSOCIATION, INC, et al,
Defendants.

FINAL JUDGMENT

UPON DUE CONSIDERATION of the parties written submissions, evidence and testimony, and oral arguments and for the reasons announced on the record at the evidentiary hearing held in this case this day, it is ORDERED AND ADJUDGED as follows:

1) Defendant's oral Motion to Enforcement Settlement Agreement is granted.

2) The terms of the written mediated Settlement Agreement introduced into evidence by Defendant as Exhibit 1 is incorporated herein by reference and final judgment on each count of Plaintiffs complaint and on each count of Defendant's counterclaim is hereby entered in accordance with its terms.

3) To the extent the Plaintiffs sought relief not granted by the Mediated Settlement Agreement, Plaintiffs shall recover nothing by their action and Defendant shall go hence without day.

4) To the extent the Defendant sought relief not granted by the Mediated Settlement Agreement, Defendant shall recover nothing by their action and Plaintiffs shall go hence without day.

5) Title to Plaintiff, Mohammed Busch Bhadelia's Property described on Exhibit A" to the Mediated Settlement Agreement which was conveyed to him by the Resolution Trust Corporation by that certain Special Warranty Deed recorded at OR. Book 6550, Page 1705 of the Public Records of Hillsborough County, Florida, less and except Building "N" and the five (5) foot perimeter surrounding the imprint of said Building 'N' and Units L-106 and A-112 is hereby quieted in the name of the Defendant, Marina Club of Tampa Homeowners' Association, Inc.

6) This Court retains jurisdiction to enforce the terms of the Mediated Settlement Agreement and this Final Judgment and to add a corrected legal description, if necessary, following the completion of

a survey of the Property and an examination of its title.

7) The Clerk is directed to close the file

DONE AND ORDERED at Tampa, Florida, On February 24, 2005.

BY THE COURT:
s/Richard A. Lazzara

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO.
Counsel of Record
Any *pro se* parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA, et al.,
Plaintiffs,

Vs.

MARINA CLUB OF TAMPA HOMEOWNERS ASSOCIATION INC., et al.,
Defendants,

CASE NO.: 8:03-1189

Settlement Agreement

I. In this settlement agreement the CRE's shall refer to that certain First Amendment and First Supplemental Declaration of Covenants, Restrictions and Easements for The Marina Club of Tampa recorded at OR. Book *4239* Page 484, of the Public Records of Hillsborough County.

II. Building "N" - Title to Building "N"

A. Defendants will stipulate to the entry of a Judgment quieting title to Building N and the five foot perimeter surrounding (the "building N property") as depicted in the attached; subject however to the following conditions:

B. Time restraints
1. Plaintiffs shall apply for a building permit for completion of the dwelling units in Building N within 120 days.
2. Building N construction must be completed and certificates of occupancy

issued for all dwelling units in Building N within 2 years of issuance of the building permit.

3. The Plaintiffs must obtain a building permit for the completion of Building N within 2 years of application.
4. Failure to meet the above time frames, except for force majeure. Shall result in the HOA having a lien on the Building N property in the amount of $1,000 per day.

C. The Units in Building N shall be offered for sale and shall not be held by Plaintiffs as rental units.

D. The building N property shall be deemed to be encumbered by the CREs and. thereby, all owners of dwelling units in Building N shall he members of the HOA.

E. Building N property shall be submitted to a declaration of condominium.

F. HOA assessments on each dwelling units in Building N will be assessed upon the sale of the dwelling unit by the Plaintiffs. No votes in the HOA shall inure to the dwelling units in Building N until sold by the Plaintiffs.

III. Payment and Conveyance

A. Defendant shall pay the Plaintiffs $675,000 within 120 days of the date of' the Order pursuant to this settlement is entered by the Judge.

B. Plaintiffs shall convey to Defendants, free and clear of any liens and encumbrances what so ever, all of the property now owned by the Plaintiffs 'which was conveyed in that certain

Special Warranty Deed recorded at OR. Book 6850. Page 1705 of the Public Records of Hillsborough County Florida. save the Building N Property and units L106 and A 112. The CRE's shall not be considered an encumbrance as that term is used in this paragraph.

C. Plaintiffs will stipulate to the entry of a Judgment quieting title in the defendants to the property conveyed.

IV. Approval of Settlement by Board of Directors of Defendant

A. Within 21 days the Defendant shall schedule end hold a meeting of its Board of Directors to approve this settlement and the necessary financing to fund the settlement This settlement is conditioned upon the approval by the Board of Directors of Defendants within 21 days and obtaining the necessary financing within 120 days.

V. Confidentiality Clause

A. The Plaintiffs shall keep the terms of this settlement confidential until the date on which the Order is entered pursuant to this settlement.

Approved by:

/s/ Farooq Bhadelia
Mohammed Husein Bhadelia
By Farooq Bhadelia
/s/ Patty Mira, President
Marina Club of Tampa Homeowner's Association, Inc. by Patty Mira

Mediator *Guy Spicola*
Date 8/23/04

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA. and
MOHAMMED FAROOQ BHADELIA,
Plaintiffs,
v. CASE NO: 8:03-cv-1189-T-26TBW

MARINA CLUB OF TAMPA, HOA. INC..
Defendant.

ORDER

Upon due consideration of the parties' written submissions and oral arguments, and for the reasons announced on the record at the hearing held in this case this day, it is ordered and adjudged that Defendant's Motion for Preliminary Injunction (Dkt. 111) is granted. The terms and provisions of the temporary restraining order entered by the Court on August 14, 2007, and found at docket 118 of the court file, are hereby made permanent, and all persons who were enjoined by the temporary restraining order shall continue to adhere to its terms and provisions until further order of the Court.

DONE AND ORDERED at Tampa, Florida, on September 7, 2007.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT .JUDGE

COPIES FURNISHED TO:
Counsel of Record

94

(2)

No. 07-1357

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

DWAYNE L. GILLISPIE,

Petitioner,

vs.

MARINA CLUB OF TAMPA HOMEOWNERS ASSOCIATION, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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May 29, 2008

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
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TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Statement of the Case 1

I. Clarification of the Record 2

Reasons for Denying the Writ 10

I. Gillispie Has Not Articulated A Compelling Reason To Justify Discretionary Review By This Court 10

II. The Lower Courts Did Not Err In Deciding This Case 17

A. The District Court Did Not Abuse Its Discretion In Enforcing Its Final Judgment Incorporating The Mediation Agreement By Enjoining Husein Bhadelia And Gillispie From Allowing Anyone Other Than A Condominium Unit Owner From Occupying A Unit In Building N 17

B. Marina Club Met Its Burden For An Award Of Injunctive Relief Against Husein Bhadelia And Gillispie Even Under The Traditional Requirements For Injunctive Relief 20

C. The Eleventh Circuit Court Did Not Err In Applying The Law Of The Case Doctrine To Affirm The Ruling Of The District Court 21

Conclusion 24

TABLE OF AUTHORITIES

Page

CASES

Autozone Stores, Inc. v. Northeast Plaza Venture, LLC, 934 So.2d 670 (Fla.2d DCA 2006).....21

Alphamed, Inc. v. B. Braun Medical, Inc., 367 F.3d 1280 (11th Cir. 2004).....23

Bhadelia v. Marina Club of Tampa, 142 Fed. Appx. 399 (11th Cir. 2005), cert. denied, 546 U.S. 1090 (2006).....13, 23

Bhadelia v. Marina Club of Tampa, 2008 WL 311703, rehearing denied, ___ F.3d ___ (11th Cir. 2008).....10

Burr & Forman v. Blair, 470 F.3d 1019 (11th Cir. 2006).....18

Department of Business Regulation, Div. of Land Sales v. Siegel, 479 So.2d 112 (Fla. 1985).....14

Ex parte Leaf Tobacco Bd. of Trade, 222 U.S. 578 (1911).....12

Frisby v. Schultz, 487 U.S. 474 (1988).....15

Klay v. United Healthgroup, 376 F.3d 1092 (11th Cir. 2004).....18, 20

Marino v. Ortiz, 484 U.S. 301 (1988), rehearing denied, 484 U.S. 1082 (1988).....12

Mohammed Husein Bhadelia v. Marina Club of Tampa Homeowners Ass'n, Inc., 546 U.S. 1090 (2006).....5

TABLE OF AUTHORITIES – Continued

Page

STATUTES

All Writs Act, 28 U.S.C.A. § 1651(a) 17, 18, 20

Florida Statute § 95.281.....6, 8

Florida Statute § 718.101.....14

Florida Statute § 718.104(3) 8

Florida Statutes, Ch. 720 14

RULE

Sup.Ct. R. 10.....11, 24

STATEMENT OF THE CASE

Non-party, pro se petitioner, Dwayne Gillispie ("Gillispie") has petitioned this Court for a discretionary review of the final order entered by the United States District Court for the Middle District of Florida on September 7, 2007 that enjoined Mohammed Husein Bhadelia ("Husein Bhadelia") and those acting in concert with him including Gillispie from violating the trial court's final judgment in favor of Marina Club of Tampa Homeowners Association, Inc. ("Marina Club") by allowing non-condominium unit owners to occupy units in Husein Bhadelia's Building N at the Marina Club of Tampa Complex.

Gillispie's petition arises from a protracted dispute between Husein Bhadelia and Marina Club that has been waged in both federal and state court and has included four appeals by Bhadelia to the Eleventh Circuit Court of Appeals, this Court's previous denial of his petition for writ of certiorari to review the District Court of Florida's final judgment enforcing a mediation agreement that was affirmed by the Eleventh Circuit, and an appeal by Bhadelia's mortgage holder and brother, Abdul Razak ("Razak") of a summary judgment entered in favor of Marina Club and holding that Razak's mortgage lien had expired on the common areas and undeveloped land owned by Marina Club. Razak's appeal finally concluded on February 19, 2008 when the Supreme Court of Florida denied his request for jurisdiction to review the summary judgment entered in favor of

Marina Club and affirmed by Florida's Second District Court of Appeals.

I. CLARIFICATION OF THE RECORD

The facts set forth in the Petitioner's Statement of the Case do not accurately reflect the record and include matters that have never been part of the record of the courts below. Husein Bhadelia and his brother, Farooq filed an amended complaint against Marina Club on August 1, 2003. In their amended complaint, they alleged: in count I – that Marina Club retaliated against them in violation of the Americans With Disabilities Act ("ADA") and Fair Housing Amendment Act ("FHAA") after they sent their letter (by Gillispie) demanding that Marina Club recognize the rights of HUD Section 811 future tenants of Building N and that Marina Club make the Condominium Complex handicap accessible; in count II – that Marina Club was liable for racial and national origin discrimination due to alleged remarks made by its agents to the Bhadelias after the September 11, 2001 attack on America; in count III – for declaratory relief stemming from the notice of lis pendens that Marina Club filed against Husein Bhadelia's property in Marina Club's state court declaratory judgment action concerning title to the common areas and amenities that were supposed to be transferred to Marina Club under the recorded Declaration of Covenants, Restrictions and Easements ("CRE's") and in count IV – the Bhadelias' claimed that Marina Club allegedly committed fraud in representing that it had the authority to manage the common areas.

Marina Club filed its answer, affirmative defenses and counterclaim against the Bhadelias on October 14, 2003. In its counterclaim against the Bhadelias, Marina Club sought to quiet title in its name to the common areas and amenities that should have been conveyed to Marina Club before December 31, 1992 as required by the CRE's. Marina Club further alleged that Building N and other non-developed land was included within the legal description of the committed common properties to which title should have been conveyed to Marina Club.

On July 7, 2004, the district court referred the parties to court ordered mediation before the trial scheduled upon the November 2004 trial docket. Husein Bhadelia, a citizen and resident of Pakistan, did not appear at the mediation held on August 23, 2004. Nevertheless, the mediation proceeded due to representations from his brother, Farooq Bhadelia and the Bhadelias' attorneys to Marina Club's representatives, its attorneys and to the mediator, that Husein Bhadelia had given his brother, Farooq Bhadelia, full authority to settle all claims on Husein Bhadelia's behalf. At the conclusion of the mediation, the Bhadelias and Marina Club reached a settlement agreement that allowed the Bhadelias to complete and sell Building N as condominiums subject to deadlines for completion of construction and fines in the event the deadlines were not met. In addition, title to the amenities, common properties and two additional parcels upon which the original developer had reserved the right to build additional buildings

were to be quieted in Marina Club's name by a final judgment to be entered by the district court.

Marina Club obtained financing to pay Husein Bhadelia the $675,000.00 required by the terms of the mediation agreement and repeatedly attempted to schedule a closing in order to pay him and to obtain a deed from him to the property described in the mediation agreement free and clear of all liens. After the Bhadelias repudiated the mediation agreement, the district court held an evidentiary hearing and found that Farooq had his brother's unequivocal authority to enter into the mediation agreement. Therefore, the district court granted Marina Club's motion to enforce the mediation agreement, entered final judgment in its favor, and reserved jurisdiction to enforce the remaining terms of the mediation agreement.

On March 4, 2005, the Bhadelias appealed the district court's final judgment enforcing the mediation agreement to the Eleventh Circuit Court of Appeals. The Eleventh Circuit affirmed the district court's final judgment on July 27, 2005, and after the Bhadelias motion for rehearing was denied, the Eleventh Circuit issued its mandate on August 31, 2005. While his motion for rehearing was pending, Husein Bhadelia executed and delivered a deed to his brother, Razak, a citizen of Pakistan. In doing so, Husein Bhadelia attempted to convey to Razak all of the property at the Marina Club of Tampa Complex described in the deed that Husein Bhadelia had received from the Resolution Trust Corporation ("RTC") including the common areas, amenities and

undeveloped parcels that the district court's judgment had quieted in favor of Marina Club and that Husein Bhadelia was required to deed to Marina Club free and clear of all liens.

Husein Bhadelia purportedly conveyed the aforementioned property to Razak by a deed in lieu of foreclosure of a mortgage that Husein Bhadelia had previously executed and delivered to Razak in Hillsborough County, Florida. Husein Bhadelia subsequently filed a pro se Petition for Writ of Certiorari to this Court on September 12, 2005 challenging that the district court had jurisdiction to enter its final judgment, as well as the validity of the mediation agreement. This Court subsequently denied Husein Bhadelia's Petition for Writ of Certiorari on January 9, 2006. See *Mohammed Husein Bhadelia v. Marina Club of Tampa Homeowners Ass'n, Inc.*, 546 U.S. 1090 (2006).

After Husein Bhadelia's Petition was denied and because he had deeded Marina Club's property to his brother in an attempt to circumvent the district court's final judgment, Marina Club filed a motion on January 26, 2006 requesting the district court to enforce its final judgment, to hold Husein Bhadelia and his brother, non-party, Razak in contempt and to award sanctions against Husein Bhadelia and in favor of Marina Club for the expenses it had incurred as a result of his conduct in failing to obey the final judgment.

During an order to show cause hearing held before the district court on February 27, 2006,

Razak's attorneys stipulated that the deed in lieu of foreclosure given to Razak was void and the district court denied Marina Club's motions for sanctions against Razak. However, the district court found that Husein Bhadelia's refusal to obey its final judgment was willful and ruled that it would sanction him for his willful refusal to obey the district court's final judgment by awarding Marina Club the attorneys' fees it had incurred. The district court also refused to grant Marina Club the relief it requested as to Razak's mortgage and informed Marina Club that it would have to seek to quiet title against Razak's mortgage interest on Marina Club's property in Florida's state court. The state court thereafter entered a final judgment quieting title in favor of Marina Club after ruling that Razak's mortgage lien on Marina Club's property had expired under Florida Statute § 95.281.

After a certificate of occupancy was issued for Building N in July of 2007, Gillispie and his sister, Sunni Bhadelia, as agents for Husein Bhadelia, informed Marina Club that they were moving homeless, non-condominium unit owners into Building N on a temporary basis. Marina Club then moved the district court for a temporary restraining order and for a preliminary injunction. Marina Club argued that Husein Bhadelia, Gillispie and Sunni Bhadelia were violating the terms of the final judgment which had incorporated the mediation settlement agreement and required that Husein Bhadelia sell his

units in Building N as condominiums and not hold them as rental property.

In its affidavits filed in support of its motions, Marina Club stated that it was being irreparably harmed because Husein Bhadelia and his agents were not only violating the district court's final judgment, but by moving in residents without first submitting them to Marina Club for screening as required by the CRE's and the Rules promulgated by the Marina Club, Husein Bhadelia and his agents were violating the CRE's.

On August 14, 2007, the district court entered a temporary restraining order which restrained Husein Bhadelia, Gillispie, and Sunni Bhadelia from allowing anyone other than a buyer of a condominium unit from occupying a unit in Building N. In its order granting Marina Club's motion for a temporary restraining order, the district court found that Husein Bhadelia through his agents, Gillispie and Sunni Bhadelia, had moved a non-condominium unit owner into Building N in violation of its final judgment and that they intended to move additional individuals into Building N who were not owners and who had not been screened as required by Marina Club's CRE's that govern the use of the Marina Club of Tampa Complex. After concluding that there was imminent, irreparable harm to Marina Club caused by the conduct of Husein Bhadelia's agents that could not be remedied by a money judgment, the district court entered its restraining order, ordered Husein Bhadelia and Gillispie to file responses to Marina

Club's motion for preliminary injunction and set a hearing on Marina Club's motion.

Husein Bhadelia and Gillispie filed their respective responses to Marina Club's motion for preliminary injunction on September 4, 2007. In his response, Husein Bhadelia acknowledged that under the final judgment incorporating the mediation agreement, the units in Building N had to be submitted to a declaration of condominiums and that they could not be held as rental property. However, Husein Bhadelia claimed that he was moving homeless people into his units in Building N on a temporary basis pending the outcome of his brother, Razak's appeal to the State of Florida's Second District Court of Appeals of the state court's final summary judgment which held that Razak's mortgage lien on Marina Club's property had expired under Florida Statute § 95.281. Husein Bhadelia argued that he could not file a declaration of condominium required by the mediation agreement because Razak, as the mortgage holder, would not join in the execution of the declaration of condominium as required by Florida Statute § 718.104(3). Husein Bhadelia further argued that since he could not comply with the final judgment by filing a declaration of condominium, he should be permitted to use his property for charitable purposes in the interim. Husein Bhadelia also adopted the arguments made by Gillispie in his response.

In his response, Gillispie asserted that the district court never had proper jurisdiction over Marina

Club's original counterclaim against Husein Bhadelia, and as a result, the district court never had jurisdiction to issue its final judgment enforcing the mediation settlement agreement or to issue the temporary restraining order and the preliminary injunction requiring Husein Bhadelia and Gillispie to abide by the terms of the final judgment.

In reply to Gillispie's response, Marina Club filed the Eleventh Circuit Court of Appeals' Mandate and Opinion issued on July 27, 2005 and abstracts from Husein Bhadelia's and Marina Club's respective appellate briefs filed in Case No. 05-11292-II which established that the issues raised by Gillispie had already been decided by the Eleventh Circuit Court of Appeals during Husein Bhadelia's second appeal. The district court held a hearing on Marina Club's motion for preliminary injunction on September 7, 2007. During the hearing, the district court advised Husein Bhadelia's counsel that the Eleventh Circuit in its earlier appeal had already rejected the argument made by Gillispie that the district court lacked subject matter jurisdiction in a footnote to its July 27, 2005 opinion.

After hearing the arguments by Gillispie and the attorneys for the parties and after viewing the lengthy criminal record of the only person whom Husein Bhadelia and Gillispie had moved into Building N, the district court granted Marina Club's motion for preliminary injunction after ruling that the mediation agreement incorporated into the district court's final judgment contemplated that Building N

would be used as a condominium and not as a homeless shelter. The district court entered its order granting Marina Club's motion for preliminary injunction immediately after the September 7, 2007 hearing.

Gillispie subsequently filed his notice of appeal of the district court's September 7, 2007 order to the Eleventh Circuit Court of Appeals on September 18, 2007. The Eleventh Circuit Court of Appeals issued its opinion affirming the district court's final order granting an injunction against Husein Bhadelia and Gillispie on February 5, 2008 and further denied Gillispie's motion for rehearing and for rehearing en banc on March 18, 2008. *Bhadelia v. Marina Club of Tampa*, 2008 WL 311703, rehearing denied, ___ F.3d ___ (11th Cir. 2008). Gillispie subsequently filed his Petition for Writ of Certiorari to this Court on April 19, 2008. Husein Bhadelia did not personally appeal the final order of the district court granting an injunction and enjoining him from moving non-condominium unit owners into Building N.

REASONS FOR DENYING THE WRIT

I. GILLISPIE HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT

The opinions and rulings of the courts below do not conflict with a decision of this Court or any Court of Appeals nor do they implicate a federal question

that has not been decided by this Court. "Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for writ of certiorari will be granted only for compelling reasons." *Id.* Gillispie has not presented a compelling reason to justify this Court's discretionary review of the opinion of the Eleventh Circuit Court of Appeals' affirming the final order entered by the district court enjoining Bhadelia, and those acting in concert with him, including Gillispie, from violating the district court's final judgment by permitting non-condominium unit owners from residing in Building N.

Being unable to argue conflict or the implication of an undecided federal question, Gillispie has attempted to argue in his Petition that this Court should exercise its supervisory powers because the Eleventh Circuit Court of Appeals approved the district court's departure from the accepted and usual course of judicial proceedings by affirming the district court's injunction against him. In actuality, Gillispie's petition to this Court is nothing more than a veiled attempt as Bhadelia's agent to re-argue the enforceability of the mediation agreement that has already been determined by the district court's final judgment against Bhadelia, that was subsequently affirmed by the Eleventh Circuit Court of Appeals and passed upon by this Court when it previously denied Bhadelia's petition for certiorari review of the final judgment.

In his Petition, Gillispie did not address the final order that he appealed which granted an injunction

against him for acting in concert with Husein Bhadelia to violate the district court's final judgment. Nor did Gillispie discuss the opinion of the Eleventh Circuit Court of Appeals affirming the district court's final order after finding that it did not abuse its discretion in granting its injunction. Since the final order granting the injunction specifically named Gillispie, he has standing to appeal that final order. However, rather than arguing that the district court, with the approval of the Eleventh Circuit, deviated from the accepted and usual course of judicial proceedings in entering its injunction, Gillispie has instead attacked the validity of the mediation agreement and the final judgment from a case in which he was not a party.

Gillispie, as a non-party to the proceedings that gave rise to the district court's final judgment, simply has no standing or right to seek certiorari review of that final judgment. This Court has consistently adhered to the well established basic rule that a nonparty cannot appeal the judgment in an action between others. *Marino v. Ortiz*, 484 U.S. 301, 303 (1988), rehearing denied, 484 U.S. 1082 (1988); *Ex parte Leaf Tobacco Bd. of Trade*, 222 U.S. 578, 581 (1911).

In attempting to support his claim that the district court departed too far from the accepted and usual course of judicial proceedings, Gillispie argues that the district court ignored Husein Bhadelia's request for declaratory relief set forth in Count III of the Bhadelias' amended complaint. Gillispie further

argues that Razak as the mortgagee should have been included as a party to the litigation and that he should have been a party participating at mediation. (Pet. at p.5-6). Gillispie's argument is without merit. The Bhadelias chose not to include Razak as a party to their amended complaint. Although Marina Club initially named Razak as a party to its counterclaim, it could not perfect service upon him because he was at all times a citizen and resident of Pakistan. More importantly, however, as the Eleventh Circuit Court of Appeals explained in footnote 2 to its July 27, 2005 Opinion, by entering into the mediation agreement with Marina Club, the Bhadelias and Marina Club resolved the entire case including the matters arising under the declaratory judgment count in the Bhadelias' Amended Complaint. *Bhadelia v. Marina Club of Tampa*, 142 Fed. Appx. 399, 402 (11th Cir. 2005).

Gillispie also argues that the district court and the Eleventh Circuit failed to determine whether "Florida Statutes 718 et seq. rendered the [mediation] agreement unenforceable as written." (Pet. at p.16-19). Even if Gillispie as a non-party has standing to challenge the district court's final judgment following Husein Bhadelia's prior appeal to the Eleventh Circuit and this Court's previous denial of certiorari review, Gillispie's contention is wrong and does not justify review pursuant to this Court's supervisory powers.

During the evidentiary hearing held on February 24, 2005, the district court heard arguments regarding the validity of the mediation agreement under Chapter 718 of the Florida Statutes. Marina Club's counsel explained to the district court that Marina Club is a homeowners association that was created by the original developer of the Marina Club of Tampa Complex under Chapter 720 of the Florida Statutes pursuant to the CRE's recorded in the public records of Hillsborough County, Florida.

According to the CRE's, Marina Club was incorporated to own and manage the Marina Club of Tampa Complex's common areas and amenities which were to be deeded by the original developer to Marina Club and included both condominium and non-condominium property. Marina Club's attorneys explained to the district court that under Florida case law interpreting the applicable Florida Statutes, a homeowners' association, such as Marina Club, which might eventually be partially comprised of non-condominium dwellers, and which presently had the authority to impose assessments upon properties which were not condominium property within scope of Florida's Condominium Act [West's F.S.A. § 718.101 et seq.] was not a "condominium association" under the Act. *Department of Business Regulation, Div. of Land Sales v. Siegel,* 479 So.2d 112 (Fla. 1985).

The above issues were also addressed by both the Bhadelias and Marina Club in their respective briefs to the Eleventh Circuit in the Bhadelias' appeal of the district court's final judgment. Accordingly, the

district court and the Eleventh Circuit did not so far depart from the accepted and usual course of judicial proceedings by entering or affirming the final judgment enforcing the mediation agreement to justify review under this Court's supervisory power. Moreover, the Supreme Court normally defers to the construction of a state statute given to it by the lower federal courts, in the belief that the district court and the Court of Appeals are better schooled in, and more able to interpret, the laws of their respective states. *Frisby v. Schultz*, 487 U.S. 474, 482 (1988).

Gillispie has also attempted to justify his request for certiorari review under this Court's supervisory powers by arguing that the questions presented for review affect the rights of all citizens of foreign countries purchasing property within the United States while utilizing banking services of their native countries. The Petitioner further contends that the impact upon the international banking world in relation to mortgages granted to citizens of foreign countries in the purchase of land within the United States requires the exercise of this Court's supervisory jurisdiction. (Pet. at p.1). Gillispie further claims that Husein Bhadelia purchased his property at the Marina Club of Tampa Complex through a mortgage executed and delivered in Pakistan to Razak and that Pakistan law has no statute of repose for its mortgages. (Pet. at p.3-4, 12-13).

Although Gillispie is requesting this Court to exercise supervisory review based upon the impact that the decisions of the courts below have upon the

rights of citizens of foreign countries to purchase property in the United States using foreign mortgages, nothing in the record below indicates that Gillispie ever purchased land in the United States using a foreign mortgage. Therefore, the Petitioner has no standing to make this argument. Moreover, there is nothing in the record below establishing that a Pakistani mortgage was even used by Husein Bhadelia to purchase his property at the Marina Club of Tampa from the RTC. The only evidence of a mortgage was the mortgage that Husein Bhadelia supposedly executed and delivered in Hillsborough County, Florida to Razak.

The argument made by the Petitioner regarding the impact upon the international banking world was never presented to a court below. Consequently, no court below could have had an opportunity to depart from the accepted and usual course of judicial proceedings with regard to Petitioner's argument concerning the impact of the district court's final judgment upon the international banking community to warrant supervisory review by this Court. The burden that the Petitioner proposes to place upon American citizens to protect the rights of foreign citizens who purchase property in the United States is untenable. Since the "Pakistani mortgage" supposedly used to purchase property in the United States was not recorded in the county where that land is located, how could anyone having any dealing with that property have knowledge of the existence of a Pakistani mortgage? Does the Petitioner really contend

that lenders and buyers of American real property must now search the registers and records of every country in the world to determine whether a foreign mortgage may somehow encumber property located in the United States? Clearly, the Petitioner's argument in favor of supervisory review has no merit.

II. THE LOWER COURTS DID NOT ERR IN DECIDING THIS CASE

A. The District Court Did Not Abuse Its Discretion In Enforcing Its Final Judgment Incorporating The Mediation Agreement By Enjoining Husein Bhadelia And Gillispie From Allowing Anyone Other Than A Condominium Unit Owner From Occupying A Unit In Building N

The district court properly enforced its final judgment incorporating the mediation agreement by entering an order granting Marina Club's motions for a temporary restraining order and preliminary injunction and prohibiting Husein Bhadelia and his agent, Gillispie from allowing anyone other than a condominium unit owner to occupy a unit within Building N.

According to the All Writs Act, 28 U.S.C.A. § 1651(a), a district court is authorized to issue an injunction to protect and enforce its final judgment. Moreover, the district court may issue an injunction under the All Writs Act without first requiring the

movant to meet the traditional four prong test for the issuance of an injunction. *Klay v. United Healthgroup*, 376 F.3d 1092, 1100 (11th Cir. 2004).

The authority of the district court under the All Writs Act is not even circumscribed by the identity of the parties immediately before it; at the district court's discretion, writs may be issued to third parties who are in a position to frustrate the district court's administration of its jurisdiction. *Burr & Forman v. Blair*, 470 F.3d 1019, 1026-1027 (11th Cir. 2006). Consequently, even though Gillispie and the individual he placed in possession of a unit in Building N were not parties to the proceedings in the courts below, the district court was authorized to issue an injunction against them if it deemed that such an action was necessary to enforce its final judgment.

In reviewing the district court's decision to grant an injunction, including an injunction under the All Writs Act, an appellate court applies an abuse-of-discretion standard. *Klay*, *Id.* at 1096. A district court abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous. *Klay*, *Id.* at 1096. An abuse of discretion occurs if a district court imposes some harm, disadvantage, or restriction upon someone that is unnecessarily broad or does not result in any offsetting gain to anyone else or society at large. *Klay*, *Id.* at 1096. The mediation agreement incorporated into the district court's final judgment specifically required Husein Bhadelia to submit Building N to

condominium ownership by filing a declaration of condominiums, it further provided that the units in Building N shall be offered for sale ***and*** shall not be held by Husein Bhadelia as rental units and that Building N shall be deemed to be encumbered by the CRE's. Despite the requirements of the final judgment, after the certificate of occupancy was issued for Building N, Husein Bhadelia did not file a declaration of condominium and he did not sell the units in Building N as condominiums. Instead, Husein Bhadelia and his agents, Gillispie and Sunni Bhadelia moved a non-condominium unit owner with a lengthy criminal record into Building N.

In making its decision to grant Marina Club's motions for injunctive relief, the district court properly ruled that it was the intent of the mediation agreement incorporated into its final judgment that Building N be used as a condominium, and that it was clear to the court that the mediation agreement did not authorize Gillispie to use Building N as a homeless shelter. After interpreting the terms of the mediation agreement incorporated into its final judgment as construing the parties' intent that Building N only be used as a condominium, the district court did not abuse its discretion in making its temporary restraining order permanent to maintain the status quo until the issues remaining before the state court are resolved.

The district court properly found that there was a threat to the Marina Club's unit owners' families after reviewing the lengthy criminal record of the

occupant Husein Bhadelia moved into Building N. The district court then used its calculated sound discretion to protect the Marina Club condominium unit owners thereby achieving the ends of justice entrusted to the district court. Consequently, the Eleventh Circuit did not err in affirming the district court's order granting Marina Club's motion for a temporary restraining order under the authority of the All Writs Act.

B. Marina Club Met Its Burden For An Award Of Injunctive Relief Against Husein Bhadelia And Gillispie Even Under The Traditional Requirements For Injunctive Relief

The district court's order granting Marina Club's requested injunctive relief was also proper based upon the application of the traditional requirements for granting injunctive relief. A district court may grant traditional injunctive relief provided the movant can show: (1) a substantial likelihood of success on the merits, (2) irreparable injury if the injunction does not issue, (3) the threatened injury to the movant outweighs any damage an injunction may cause the opposing party, and (4) the injunction would not be adverse to the public interest. *Klay*, *Id.* at 1097.

Marina Club clearly demonstrated to the district court that the Respondent's request for an injunction met the four traditional requirements necessary for an award of injunctive relief based upon the evidence

in the record and the threat of imminent harm to the families owning units at Marina Club of Tampa due to Husein Bhadelia's refusal to permit Marina Club to screen occupants as required by the recorded restrictive covenants.

Florida law has long recognized that injunctive relief is available to remedy the violation of a restrictive covenant without a showing that the violation has caused an irreparable injury – that is, an injury for which there is no adequate remedy at law. *Autozone Stores, Inc. v. Northeast Plaza Venture, LLC*, 934 So.2d 670, 673 (Fla.2d DCA 2006). Consequently, even though Marina Club could establish irreparable harm, it was not required to show proof of irreparable injury or that a judgment for damages would be inadequate before obtaining injunctive relief since the conduct of Husein Bhadelia and his agents violated a recorded restrictive covenant. Therefore, the Eleventh Circuit did not err in affirming the district court's final order granting injunctive relief after finding that the district court did not abuse its discretion.

C. The Eleventh Circuit Court Did Not Err In Applying The Law Of The Case Doctrine To Affirm The Ruling Of The District Court

Every argument raised by Gillispie in his response filed in the district court had previously been asserted in the district court by Husein Bhadelia in his motion to dismiss and in his eleven affirmative

defenses asserted in his answer to Marina Club's counterclaim. Moreover, most of the documents Gillispie filed with his response in the district court were also filed as exhibits to Husein Bhadelia's motion to dismiss. In his answer to Marina Club's counterclaim, Husein Bhadelia also alleged that the district court lacked subject matter jurisdiction (second affirmative defense) and that Marina Club lacked standing (fourth and ninth affirmative defenses).

Contrary to Gillispie's arguments made in his response to Marina Club's motion for injunctive relief filed in the district court, and in his initial brief to the Eleventh Circuit, the district court did consider his arguments when they were made by Husein Bhadelia and the district court previously rejected them when it denied Husein Bhadelia's motion to dismiss. More importantly, however, Husein Bhadelia waived his rights with regard to his affirmative defenses when he settled with Marina Club at the court ordered mediation and when the mediation agreement was incorporated into the district court's final judgment.

Both Husein Bhadelia, in his amended complaint and Marina Club in its counterclaim, filed pleadings requesting the district court to determine their respective rights arising under the CRE's and Florida law. Accordingly, when Husein Bhadelia settled with Marina Club at mediation, he waived his right to continue to litigate those claims and defenses. Therefore, when Husein Bhadelia again raised the issues of jurisdiction and standing during his second appeal (Case No. 05-11292-I), the Eleventh Circuit in

footnote 2 properly stated: "The Bhadelias' remaining issues on appeal, such as the district court's initial denial of their motion to dismiss before sending the case to settlement, are without merit and are not discussed further. The settlement agreement resolved the entire case." See Footnote 2, *Bhadelia v. Marina Club of Tampa*, 142 Fed. Appx. 399 (11th Cir. 2005), cert. denied, 546 U.S. 1090 (2006).

Prior to the hearing on Marina Club's motion for preliminary injunction, and after reviewing the responses of Gillispie and Husein Bhadelia that raised lack of jurisdiction and standing, Marina Club filed excerpts from Husein Bhadelia's initial brief and Marina Club's answer brief and the aforementioned Eleventh Circuit Court opinion, Case No. 05-11292-I to demonstrate to the district court that jurisdiction and standing had previously been decided. The excerpts filed with the district court were included in the Appendix to Marina Club's Answer Brief filed with the Eleventh Circuit. Therefore, the district court was correct when it advised Gillispie and Husein Bhadelia's counsel at the September 7, 2007 hearing that it had jurisdiction and that Gillispie's arguments that were adopted by Husein Bhadelia had already been rejected by the Eleventh Circuit in its aforementioned opinion.

Under the law of the case doctrine, both the district courts and the Circuit Courts of Appeal are generally bound by a prior appellate decision in the same case. *Alphamed, Inc. v. B. Braun Medical, Inc.*, 367 F.3d 1280, 1285-1286 (11th Cir. 2004). Consequently,

the Eleventh Circuit did not err by applying the law of the case doctrine to refuse to again consider the arguments previously made by Husein Bhadelia and rejected by the Eleventh Circuit in its previous opinion when they were presented by Gillispie in his response to Marina Club's motion for injunctive relief filed in the district court. Therefore, the Petitioner has not met his burden of demonstrating any "compelling reasons" for his Petition to be granted. See Sup. Ct. R.10.

CONCLUSION

For all of the foregoing reasons, Respondent, Marina Club respectfully requests that this Honorable Court denies Petitioner, Gillispie's Petition.

Respectfully submitted,

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CASE NUMBER: 07-1357

IN THE
SUPREME COURT OF THE
UNITED STATES

DWAYNE L. GILLISPIE
Petitioner
vs.
MARINA CLUB OF TAMPA, HOA, INC.
and
MOHAMMED HUSEIN BHADELIA,
and
MOHAMMED FAROOQ BHADELIA,
and
ABDUL RAZAK,

Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Eleventh Circuit
Court of Appeals Number: 07-14437

PETITIONER'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION TO ISSUES AND FACTS 1

STANDING 2

FAILURE OF MARINA CLUB TO SERVE DEFENDANT ABDUL RAZAK 5

FLORIDA STATUTES 718 vs. 720 7

PAKISTAN LOAN AGREEMENT RECORDING OF PUBLIC RECORD 9

FAILURE OF MARINA CLUB TO COMPLY WITH REQUIREMENT OF PAYMENT OF THAT $675,000.00. 11

RESTRAINING ORDER UNDER APPEAL 12

CONCLUSION 13

TABLE OF AUTHORITIES

FEDERAL:

Federal Rules of Civil Procedure	**id**
Rule 4	**5-6**
Federal Rules of Appellate Procedure	**id**
United States Supreme Court Rules	
Rule 12(4)	**5**
Americans With Disabilities Act	**2**
Fair Housing Act	**2**
STATE:	
F.S. 718.101 et seq	**7**
F.S. 720. et seq	**7**
F.S. 718.110(10)	**1**
F.S. 718.104(2)(3)	**7**

INTRODUCTION TO ISSUES AND FACTS

The petition for a Writ of Certiorari as filed is a request for a review of a Restraining Order which was issued against the petitioner by the District Court for the purpose of enforcing a Final Judgment of the United States District Court, Middle District of Florida.

That restraining order was issued by the District Court based upon the Court's jurisdiction and authority contained through the entry of a Final Judgment which incorporated a Court Ordered Mediation Conference Agreement.

The petitioner argued in the District Court and later in the 11th Circuit Appeal that the Mediation Agreement as written could not be enforced under the Condominium Laws (F.S. 718.) of Florida and the laws regulating that Pakistani mortgage and loan agreement which had been entered into in Pakistan.

Petitioner argued in the District Court hearing and in the 11th Circuit Appeal, that the United States District Court had improperly ordered that mediation conference prior to Marina Club ever requesting a Summons be issued by the Clerk of the District Court, and without service by Marina Club of any Summons upon the defendant named by Marina Club in their counter-claim (Abdul Razak), resulting in all Orders of the District Court relating to enforcing that Final Judgment incorporating the terms of that Mediation Settlement Agreement as without legal force and unenforceable.

STANDING

Marina Club for the first time in this litigation is addressing the question of standing of the petitioner.

In fact, Marina Club begins their brief in an effort to degrade the petitioner in their first sentence: "Non-party, pro se petitioner, Dwayne Gillispie", (M.C. Br., pg. 1, line 1) as if this is to tell the Court that the petitioner is not worthy of this Court's consideration.

Petitioner is a disabled person with epilepsy and is accompanied by a large Spanish Mastiff (Dude) that has been specifically trained as a "Service Dog" as defined within the United States ADA and Fair Housing Acts.

When petitioner first approached the Executive Board Members of Marina Club, and advised them of the amendments required in all of the previously filed documents, their first response was to file suit against the petitioner and Husein Bhadelia in an attempt to force the petitioner and his "Service Dog" out of the complex.

Marina Club filed for an injunction in Florida Circuit Court stating that petitioner's "Service Dog" was over the pet weight limit rules of Marina Club and wanted the Court to order the petitioner and the dog off the property.

Petitioner then on March 12, 2002 attended a hearing in the Chambers of the Florida Circuit Court Judge (Honorable Gregory P. Holder) and advised the Court and Marina Club's counsel of record that he was a disabled person and the dog was a service dog protected by the ADA.

Petitioner was advised by Judge Holder that the ADA was a Federal question and he only was interested in the dog's weight. The counsel of record

for Marina Club stated in the hearing in front of Judge Holder, "You (Petitioner) need to get your ass off Marina Club property and find a cure for your illness, and I will personally throw you off and take that "Sand Nigger's" property while I'm at it".

Judge Gregory P. Holder laughed at the comments of the Marina Club counsel of record and then gave the petitioner twenty days to file a written response.

Petitioner did immediately file in the United States District Court a complaint for violation of petitioner's civil rights under the ADA and Fair Housing Acts against Marina Club and named Florida Circuit Court Judge Gregory P. Holder as an additional defendant during the litigation. The United States Marshall served Judge Holder that petitioner's Civil Rights Complaint as the petitioner's written response.

This same Judge Holder is the Judge in the Florida Circuit Court who eventually in that same Florida state litigation issued that summary judgment against Razak superseding the laws of Pakistan with a Florida vague statute of repose.

The original complaint filed by Bhadelia in the United States District Court and the subject of this petition was a complaint against Marina Club for violations of the ADA and Fair Housing Act committed by Marina Club against Bhadelia during Bhadelia supporting petitioner in his exercise of those civil rights of the ADA and Fair Housing Act and later that complaint was amended to request a declaratory judgment to correct the documents of Marina Club which were never properly amended.

Marina Club in a request for the Restraining Order under appeal did not file a new petition or motion for injunctive relief. Instead Marina Club

chose to invoke the original jurisdiction of the United States District Court in the below litigation between Marina Club, Bhadelia, and Razak.

Marina Club chose to name the petitioner as a defendant in that request for a restraining order.

After petitioner has responded under Court order to that request for a restraining order, appeared in District Court as a defendant, and appealed to the 11th Circuit Court of Appeals, Marina Club claims now that the petitioner is a "Non-Party" in this protracted litigation.

A party to a litigation is an entity which has filed the complaint or is named by the plaintiff as a defendant and who is directly affected by any orders or judgments of the court

The petitioner was named by Marina Club as a defendant and is directly affected by that Restraining Order which has restrained the petitioner from performing acts which are not in violation of any laws or written agreements without due process.

The respondent in the hearing in the United States District Court and later in that appeal before the 11th Circuit waived those objections by failing and refusing to address the subject.

In, fact when asked by the District Court as to why the petitioner was named in that request for a Restraining Order, (District Court Hearing, September 7, 2007 Hearing Transcript pg. 30 line 9-10) **THE COURT**: Why does he—(referring to Gillispie) he is not even a party here, is he?" Counsel for the respondent (Ronald Henry Trybus) testified that (Transcript pg. 30 line 11-12) "Well, Your Honor, he's been here since the beginning of time....."referring to the fact that Gillispie was the first one in this litigation sued by Marina Club. .

United States Supreme Court Rules 12(4): Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari.

Petitioner has been wrongfully restrained from acts which but for the deviation of the District Court and the improper Order for a Mediation Conference would not violate any laws or Orders of any Court. For this reason the petitioner is directly and adversely affected by all Orders of the District Court issued after that deviation from the procedures of F.S. 718.110(10) by the District Court.

FAILURE OF MARINA CLUB TO SERVE DEFENDANT ABDUL RAZAK

Respondent does admit to the fact (M.C. Br. pg. 13 lines 6-9) that respondent initially named Razak as a party to its counterclaim.

> Federal Rules of Civil Procedure, Rule 4 **SUMMONS**:
>
> (f) **Service Upon Individuals in a Foreign Country.** Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:
>
> (1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or
>
> (2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:
>
> (A) in the manner prescribed by the law of the foreign country for service in that country in an

action in any of its courts of general jurisdiction, or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court

Marina Club further states (M.C. Br. pg. 13 line 8-9) "it could not perfect service upon him (Razak) because he was at all times a citizen and resident of Pakistan."

That explanation of Marina Club fails to excuse the fact that Marina Club never attempted to perform service upon that defendant. (Razak) The explanation offered by Marina Club totally ignores the fact that Marina Club attached the mortgage and loan agreement as attachment "E" to their counter-claim (District Court Docket item 11 attachment E) and that the name of the law firm representing Razak in Tampa, Florida (Fowler/White) was listed on that attachment.

How then can Marina Club now ask that their failure be excused by the statement that they "could not perfect service on him" when they made no attempt to ever serve a Razak?

How can Marina Club explain the service in the Florida Circuit Court on Razak by Marina Club and the immediate response by Razak attorneys?

FLORIDA STATUTES 718 vs. 720

The importance of the original request for a Declaratory Judgment and questions of law which were required to be answered are now amplified through that mediation agreement and the brief of Marina Club.

Marina Club states that, (M.C. Br. pg. 14) under Florida case law interpreting the applicable Florida Statutes, a homeowner's association, such as Marina Club of Tampa Homeowner's Association, Inc., which might eventually be partially comprised of non-condominium property within the scope of Florida's Condominium Act was not a condominium.

The mediation agreement requires that Bhadelia submit all property deeded to Bhadelia by the Resolution Trust Corporation to condominium ownership.

In that act, as required by the agreement, of submitting all property owned by Bhadelia to condominium ownership there would remain no property within Marina Club Multi-condominium Complex which might eventually be partially comprised of non-condominium property.

Marina Club did specifically state to the 11th Circuit Court of Appeals (M.C. App. Br. Pg. 34) that the purpose of the Marina Club entering into that agreement to purchase Bhadelia property was to eliminate and prevent the possibility of any construction of any non-condominium residences within the Marina Club of Tampa Multi-condominium Complex

Florida Statutes 718.101 et seq requires that a multi-condominium complex which is not comprised of any non-condominium property be operated **only by a Master Condominium Association.** Even

through that argument presented by Marina Club (M.C. Br. pg. 14) it is admitted by and claimed by Marina Club that under F.S. 718 definitions that Marina Club of Tampa Homeowner's Association, Inc. is not a condominium association.

Marina Club of Tampa Homeowner's Association, Inc. would be prohibited by Florida Law from the management and control of that Marina Club Multi-condominium Complex upon submission of Bhadelia property to condominium ownership.

The CRE's designated and addressed within that mediated agreement and that request for a Declaratory Judgment are not a Declaration of Condominium as required under Florida Condominium laws. All of the previously created condominiums within Marina Club have Declarations of Condominium recorded with the Clerk of Hillsborough County, Florida and pay the appropriate fees annually to the Florida Division of Condominiums.

Marina Club of Tampa Homeowner's Association, Inc. does not have a Declaration of Condominium recorded and pays no fees to the Florida Division of Condominiums.

Submission of those present Condominiums and that property submitted by Bhadelia to Master Condominium Association management requires that Florida Statute 718.110 and 718.104 be fully complied with. The statutes require that amended Declarations of Condominium be recorded by each of the four current and the one future Bhadelia condominium which would submit those condominiums to a Master Condominium Association yet to be created under Florida Statute.

That request for a Declaratory Judgment did request that the District Court issue an Order which

would require the Florida Division of Condominiums to oversee all agreements and filing of documents necessary to eliminate this question.

This is a question of laws, rights, and application of appropriate laws and is governed by F.S. 718.110(10). It is not a subject for mediation.

PAKISTAN LOAN AGREEMENT RECORDING OF PUBLIC RECORD

Marina Club (M.C. Br. pg. 16 pr. 1) has contradicted their own previous filings in the District Court. Marina Club did (District Court Docket item # 11, attachment E) attach a copy of that Promissory Note, which is recorded in the Public Records of Hillsborough County, Florida at Public Record Book 7430 pgs 154-165.

That promissory note attached to the counter-claim of Marina Club does state:

Hillsborough County Public Records *Off. Rec. BK 7430 PG 154*

PROMISSORY NOTE

U.S. $1,075,000.00 Made and delivered at **Karachi, Pakistan**

FOR VALUE RECEIVED, the undersigned promises to pay to the order of Abdul Razak, a resident of Karachi, Pakistan referred to as "Holder" the principal sum of U.S. DOLLARS ONE MILLION SEVENTY FIVE THOUSAND ($1,075,000.00) secured by a Mortgage and Security Agreement on certain real property, sometimes referred to as "The Marina Club" and as more specifically described at Exhibit "A" hereto, together with simple interest at the rate of fifteen percent (15%) in Accordance with the following provisions.

During the term hereof, all payments of accrued interest and principal shall be delivered to the Holder outside of the United States at its place of business or directly to the designated financial institution located in

Singapore; said payments to be made payable in accordance with schedule attached as Exhibit "B".

Marina Club states (M.C. Br. pg. 16) that petitioner's argument regarding effect upon International Banking Laws was never presented to a court below. Marina Club further states that the "Pakistani Mortgage" was not recorded in the county where the land is located.

That statement of fact by Marina Club is contradicted by M.C. attaching a certified copy of that loan agreement to the Marina Club counter-claim (D. Ct. Dkt. Item 11)

As stated, above, that Promissory Note was recorded in the public records of Hillsborough County, Florida. The land is located in Hillsborough County, Florida (D.Ct. Dkt item #11 attachment E) Marina Club named Abdul Razak as a defendant in that counter-claim.

That deviation by the District Court in failing to require Razak be served as required under FRCP Rule 4 and prematurely issuance of a Quiet Title has resulted in opinions being issued by Florida 2nd District Court of Appeals which state that Florida Statutes supersede Pakistan laws and International laws on banking.

By Marina Club attaching that non-final opinion and raising the question of the Florida Statute of repose superseding Pakistan law in that appeal, Marina Club brought the subject of Pakistan mortgage laws and International Banking laws into this appeal of the petitioner.

That opinion issued by the Florida 2nd District Court of Appeals, at this time being final, does establish Florida and 11th Circuit Case law which supersedes International Banking laws and the laws

of Pakistan and other Foreign Countries with Florida laws.

FAILURE OF MARINA CLUB TO COMPLY WITH REQUIREMENT OF PAYMENT OF THAT $675,000.00.

Marina Club (M.C. Br. pg. 4 line 3) improperly states that prior to that February 2005 enforcement hearing in District Court had obtained that $675,000. required by the agreement to be paid by Marina Club within 120 days of the entry by the District Court of that Order which incorporated the settlement agreement.

Strangely enough, that statement is contradicted by Marina Club filing in the 11th Circuit Court of Appeals an attached copy of that $1,000,000. line of credit (Objection to Bhadelia request for stay - August 2005) whereby that Line of Credit issued by the bank was not signed until July of 2005 almost five (5) months after that February hearing.

At the September 7, 2007 hearing in District Court, Bhadelia filed an affidavit which stated that Marina Club had never paid that $675,000. required by the agreement as entered in February of 2005.

Since September 7, 2007 Marina Club has made no offer of that $675,000., and has relied upon that premature order of Quiet Title to represent to the Hillsborough County Tax Appraiser and Hillsborough County Tax Collector that Marina Club owns that land which the agreement required it to purchase.

As a result of those false representations by Marina Club to the Hillsborough County Tax Collector, the Circuit Court of Hillsborough County, under motion filed by the Hillsborough County

Collector, relying on that premature Order of Quiet Title issued by the District Court, did grant that motion to void the property taxes assessed on that land for the years of 2005, 2006, and 2007 as Condominium Common areas are not taxed.

That false representation under that premature Order of Quiet Title resulted in a loss to the citizens of Hillsborough County of over $100,000. in tax revenue.

RESTRAINING ORDER UNDER APPEAL

Marina Club's brief argues the validity of a restraining order issued against the petitioner. Those arguments are based upon validity of the underlying litigation and lists much caselaw and citations relating to questions not raised by the petitioner in this petition.

Petitioner's question relates to the Deviation of the District Court prior to the mediation conference.

The questions raised by the petitioner relating to enforceability of this specific mediation agreement were not addressed by the 11th Circuit because of the attachment by Marina Club of that "Non-final" opinion issued by Florida 2nd District Court of Appeals which had superseded Pakistan mortgage laws by a Florida statute of repose which is the deviation of the 11th Circuit.

In petitioner's response to the District Court, and that appeal to the 11th Circuit the petitioner raised the issue that the District Court deviated and did Order a mediation conference before all parties had been properly served.

Petitioner has argued that if the District Court had not deviated from the requirements of a Declaratory Judgment requested as a determination of law and the failure to require that all parties be served with summons that there would have been no mediation conference.

Hence, without a mediation conference, there would have been no mediation agreement, thus there would be no Final Judgment incorporating said agreement to enforce, and there would be no restraining order against the petitioner.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted, this 2nd day of June, 2008

/s/ Dwayne L. Gillispie
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